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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,320	02/13/2001	Bernhard H. van Lengerich	BVL-102A	9819

7590
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06/30/2011

EXAMINER

ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1612

MAIL DATE	DELIVERY MODE
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06/30/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/782,320	Applicant(s) VAN LINGERICH, BERNHARD H.
	Examiner LEZAH ROBERTS	Art Unit 1612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 April 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 01 April 2011. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 42,69,70,84 and 108-110.
Claim(s) rejected: 25-31,34,35,37-40,46,50,52-59,61,64-67,73,75,79,81-83,85,91-93,95-97,101,105 and 108-110.
Claim(s) withdrawn from consideration: 94.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Frederick Krass/ Supervisory Patent Examiner, Art Unit 1612	/Lezah W Roberts/ Examiner, Art Unit 1612
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Continuation of 11. does NOT place the application in condition for allowance because: In regard to the polyvinyl acetate derivative, although this term is used in the art such as in the case of Newton et al, Applicant nor Newton disclose any examples of what compounds would encompass a hydrophobic polyvinyl derivative or groups that modify the structure to render the polyvinyl acetate derivative hydrophobic. Thus the rejection is maintained.

Upon further consideration of Newton et al in view of Eden et al, it is noted that the claims recite the limitation "not 'substantially' destructured or dextrinized" and the instant specification does not define the term "substantially". Thus it is reasonable to conclude that there is some degree of destructure and dextrinization of the plasticized starches of the instant claims. Further, although Jane et al disclose the starches have a degree of crystallinity once heated, it is reasonable to conclude that portions of the starch are amorphous because the reference discloses "highly crystalline" and not that the starch is fully crystalline, and thus the reference meets the limitation of a starch not substantially destructured or dextrinized. It is further noted that the claims recite "a plasticized mass comprising starch". The claims do not recite a plasticized starch. Considering that the compositions of Newton may comprise plasticizers, Newton would encompass a plasticized mass comprising starch. Eden et al. also disclose the presence of plasticizers and water and therefore the compositions of Eden may be interpreted as plasticized masses. It is further noted that the instant specification does not appear to define what is encompassed by a "plasticized matrix"; therefore the presence of a plasticizer would appear to meet the limitations of the instant claims.

In regard to the particle size, Eden discloses "particle size may be controlled by varying shear at the point of precipitation and/or by varying starch or salt solids. In this regard, increasing the shear will reduce the particle size while use of higher solids levels will generally increase the particle size". Therefore one of ordinary would adjust the conditions to arrive at the particle size disclosed by Newton.

In regard to the rejection in further view of Jane et al., Jane et al. disclose a modified starch and disclose starches from wheat durum are suitable for the compositions disclosed therein. Jane et al. is used for its teaching that wheat durum is a source for starch and therefore wheat durum is a suitable source of starch to be incorporated into the compositions of Newton et al in view of Eden et al.